

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

JOHN EVANS,)	Civil Action No. <u>2:17-cv-00091-WCO-JCF</u>
)	
Plaintiff,)	
)	COMPLAINT AND TRIAL BY
vs.)	JURY DEMAND
)	
NATIONWIDE RECOVERY)	
SERVICE, INC.,)	
)	
<u>Defendant.</u>)	

NATURE OF ACTION

1. Plaintiff John Evans (“Plaintiff”) brings this action against Defendant Nationwide Recovery Service, Inc. (“Defendant”) pursuant to the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*

JURISDICTION, VENUE, AND STANDING

2. This Court has jurisdiction pursuant to 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where the acts and transactions giving rise to Plaintiff’s action occurred in this district, where Plaintiff resides in this district, and where Defendant transacts business in this district.

4. “In determining whether an intangible harm constitutes injury in fact, both history and the judgment of Congress play important roles.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549, 194 L. Ed. 2d 635 (2016), *as revised* (May 24, 2016). Congress is “well positioned to identify intangible harms that meet minimum Article III requirements,” thus “Congress may ‘elevat[e] to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law.’” *Id.* (quoting *Lujan v. Defs of Wildlife*, 504 U.S. 555, 578 (1992)).

5. “Without the protections of the FDCPA, Congress determined, the ‘[e]xisting laws and procedures for redressing these injuries are inadequate to protect consumers.’” *Lane v. Bayview Loan Servicing, LLC*, No. 15 C 10446, 2016 WL 3671467, at *3 (N.D. Ill. July 11, 2016) (quoting 15 U.S.C. § 1692(b)). Thus, a failure to honor a consumer’s right under the FDCPA constitutes an injury in fact for Article III standing. *See id.* at *3 (holding that a consumer “has alleged a sufficiently concrete injury because he alleges that [Defendant] denied him the right to information due to him under the FDCPA.”); *see also Church v. Accretive Health, Inc.*, No. 15-15708, 2016 WL 3611543, at *3 (11th Cir. July 6, 2016) (holding that consumer’s § 1692g claim was sufficiently concrete to satisfy injury-in-fact requirement).

6. “[E]ven though actual monetary harm is a sufficient condition to show concrete harm, it is *not* a necessary condition.” *Lane*, 2016 WL 3671467 at *4 (emphasis in original).

THE FAIR DEBT COLLECTION PRACTICES ACT

7. Congress enacted the FDCPA to “eliminate abusive debt collection practices, to ensure that debt collectors who abstain from such practices are not competitively disadvantaged, and to promote consistent state action to protect consumers.” *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 577 (2010) (citing 15 U.S.C. § 1692(e)).

8. The FDCPA is a strict liability statute. *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1190 (11th Cir. 2010). “The FDCPA typically subjects debt collectors to liability even when violations are not knowing or intentional.” *Owen v. I.C. Sys., Inc.*, 629 F.3d 1263, 1270 (11th Cir. 2011).

9. “A single violation of the Act is sufficient to subject a debt collector to liability under the Act.” *Lewis v. Marinosci Law Grp., P.C.*, No. 13-61676-CIV, 2013 WL 5789183, at *2 (S.D. Fla. Oct. 29, 2013).

10. The Eleventh Circuit applies the “least sophisticated consumer” standard to determine whether a debt collector’s communication violates the FDCPA. *Jeter v. Credit Bureau, Inc.*, 760 F.2d 1168, 1175 (11th Cir. 1985).

11. This objective standard does not consider “whether the particular plaintiff-consumer was deceived or misled; instead, the question is ‘whether the ‘least sophisticated consumer’ would have been deceived’ by the debt collector’s conduct.” *Crawford v. LVNV Funding, LLC*, 758 F.3d 1254, 1258 (11th Cir. 2014) (quoting *Jeter*, 760 F.2d at 1177 n.11).

PARTIES

12. Plaintiff is a natural person who at all relevant times resided in the State of Georgia, County of Dawson, and City of Dawsonville.

13. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3).

14. Defendant is an entity who at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a “debt” from Plaintiff, as defined by 15 U.S.C. § 1692a(5).

15. Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

16. Plaintiff is a natural person allegedly obligated to pay a debt asserted to be owed or due a creditor other than Defendant.

17. Plaintiff’s alleged obligation arises from a transaction in which the money, property, insurance, or services that are the subject of the transaction were

incurred primarily for personal, family, or household purposes—namely, personal medical services (the “Debt”).

18. Defendant uses instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts, and regularly collects or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due, another.

19. In connection with the collection of the Debt, Defendant sent Plaintiff a letter dated September 16, 2016.

20. A true and correct copy of the September 16, 2016 letter is attached as Exhibit A.

21. The September 16, 2016 letter was Defendant’s initial communication with Plaintiff with respect to the Debt.

22. The letter purported to contain the notices required by the FDCPA, permitting Plaintiff with 30 days from receipt to dispute the debt. Exhibit A.

23. The letter further stated: “We will not submit this account to the credit reporting depositories at least until the expiration of the time period described above.” Exhibit A.

24. In order to avoid Defendant reporting the Debt on his credit report, Plaintiff paid the Debt in full on or before October 6, 2016 to the hospital he received treatment from, Northeast Georgia Physicians Group.

25. After paying the Debt off in full and prior to Defendant reporting the Debt, Plaintiff spoke with Defendant twice over the phone to notify them that he had paid the bill.

26. Therefore, Defendant knew, or should have known, that Plaintiff no longer owed the Debt.

27. After the thirty-day dispute period, Defendant reported the Debt on Plaintiff's credit report.

28. Because Plaintiff had already paid off the Debt, Defendant communicated false credit information about Plaintiff which it should have known to be false.

29. Upon information and belief, Defendant did not contact its client, Northeast Georgia Physicians Group, prior to reporting the Debt on Plaintiff's credit report.

COUNT I
VIOLATION OF 15 U.S.C. § 1692e

30. Plaintiff repeats and re-alleges each factual allegation above.

31. The FDCPA creates a broad, flexible prohibition against the use of misleading, deceptive, or false representations in the collection of debts. *See* 15 U.S.C. § 1692e. *See Hamilton v. United Healthcare of Louisiana, Inc.*, 310 F.3d 385, 392 (5th Cir. 2002) (citing legislative history reference to the FDCPA’s general prohibitions which “will enable the courts, where appropriate, to proscribe other improper conduct which is not specifically addressed”).

32. Defendant violated 15 U.S.C. § 1692e by using false, deceptive, or misleading representations or means in connection with the collection of the Debt, including by reporting Plaintiff’s Debt on his credit report after being told that he had paid the Debt off in full.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated 15 U.S.C. § 1692e;
- b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A), in the amount of \$1,000.00;
- c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiff reasonable attorneys’ fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3);

- e) Awarding Plaintiff pre-judgment and post-judgment interest as permissible by law; and
- f) Awarding such other and further relief as the Court may deem proper.

COUNT II
VIOLATION OF 15 U.S.C. § 1692e(8)

33. Plaintiff repeats and re-alleges each factual allegation above.

34. Under the same general prohibition of false, misleading, or deceptive debt collection practices, the FDCPA prohibits a debt collector from “[c]ommunicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.” 15 U.S.C. § 1692e(8).

35. Defendant violated 15 U.S.C. § 1692e(8) by communicating credit information which is known or which should be known to be false, including by reporting Plaintiff’s Debt on his credit report after being told that he had paid the Debt off in full.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated 15 U.S.C. § 1692e(8);
- b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A), in the amount of \$1,000.00;

- c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3);
- e) Awarding Plaintiff pre-judgment and post-judgment interest as permissible by law; and
- f) Awarding such other and further relief as the Court may deem proper

COUNT III
VIOLATION OF 15 U.S.C. § 1692f

36. Plaintiff repeats and re-alleges each factual allegation above.

37. The FDCPA also prohibits the use of unfair or unconscionable means to collect debts. *See* 15 U.S.C. § 1692f.

38. In addition to the non-exhaustive list of conduct that violates the FDCPA, § 1692f “allows a court to sanction improper conduct the FDCPA fails to address specifically.” *Turner v. Professional Recovery Services, Inc.*, 956 F. Supp. 2d 573, 580 (D.N.J. 2013) (quoting *Adams v. Law Offices of Stuckert & Yates*, 926 F. Supp. 521, 528 (E.D. Pa. 1996)).

39. Defendant violated 15 U.S.C. § 1692f by using unfair or unconscionable means against Plaintiff in connection with an attempt to collect the

Debt, including by reporting Plaintiff's Debt on his credit report after being told that he had paid the Debt off in full.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated 15 U.S.C. § 1692f;
- b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k(a)(2)(A), in the amount of \$1,000.00;
- c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k(a)(1);
- d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action pursuant to 15 U.S.C. § 1692k(a)(3);
- e) Awarding Plaintiff pre-judgment and post-judgment interest as permissible by law; and
- f) Awarding such other and further relief as the Court may deem proper.

TRIAL BY JURY

40. Plaintiff is entitled to and hereby demands a trial by jury.

Dated May 10, 2017

Respectfully submitted,

s/Marques J. Carter
Marques J. Carter
Georgia Bar No. 105133

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1

The undersigned hereby certifies that the foregoing document has been prepared in accordance with the font type and margin requirements of Local Rule 5.1 of the Northern District of Georgia, using a font type of Times New Roman and a point size of 14.

Respectfully submitted,

s/Marques J. Carter

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